

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

v.

TEXAS INSTRUMENTS, INC.,

Defendant.

Civil Action No. 6:12-CV-499 MHS

JURY TRIAL DEMANDED

BLUE SPIKE, LLC,

Plaintiff,

v.

SMRTV, INC.,

Defendant.

Civil Action No. 6:12-CV-581 MHS

JURY TRIAL DEMANDED

BLUE SPIKE, LLC,,

Plaintiff,

v.

THE NIELSEN COMPANY (US) LLC,

Defendant.

Civil Action No. 6:12-CV-587 MHS

JURY TRIAL DEMANDED

NOTICE OF PLAINTIFF'S NONCOMPLIANCE WITH SERVICE OBLIGATIONS

Defendants The Nielsen Company (US) LLC (“Nielsen”) and SMRTV, Inc. (“SMRTV”) hereby provide notice to this Court of Plaintiff Blue Spike, LLC’s (“Blue Spike”) failure to comply with its service obligations under the Federal Rules and this Court’s procedures for ECF filings. Blue Spike filed several documents under seal, including docket entries 1730, 1735, 1750, 1753, and 1763. The docket entry texts associated with these filings indicate they were filed in opposition to various defendants’ motions for summary judgment on the legal issue of license. Among the filings were declarations by the person who executed the relevant license on behalf of Blue Spike. Nielsen and SMRTV also have moved for summary judgment and their motion also involves the aforementioned license. These filings likely contain Blue Spike’s statements relevant to Nielsen’s and SMRTV’s license defense.

Blue Spike is obligated to serve its filings on every party, including Nielsen and SMRTV. Fed. R. Civ. P. 5(a)(1). Blue Spike’s counsel is “responsible for serving documents under seal to opposing counsel.” LR CV-5(a)(7)(C). This Court’s instructions for filing and serving sealed documents explain the purpose of this obligation:

7. Since the image of the filed electronic document is sealed to everyone except the presiding judge, you, as the filing attorney, are required to effect service of the sealed document(s) on other counsel of record. Receipt of the NEF by opposing counsel does not constitute service of the document, since it does not convey the image of the actual sealed document(s). See Local Rule CV-5(a)(7)(C).

David Maland, Electronically Filing Sealed Documents (June 9, 2009) *available at* http://www.txed.uscourts.gov/cgi-bin/view_document.cgi?document=2371.

When Blue Spike’s counsel did not provide copies of the sealed documents, counsel for Nielsen and SMRTV repeatedly requested copies.¹ Despite its clear obligations, Blue Spike’s

¹ Blue Spike’s counsel may try to excuse its non-compliance on the grounds that its filings contained confidential information of other defendants. However, the protective order allows counsel for Nielsen and SMRTV to receive confidential information. Dkt. 1562 at § 1.A.6.(a). In an effort to alleviate this as grounds for non-compliance, counsel for Nielsen and SMRTV notified Blue Spike’s counsel that the other defendants did not object to Blue Spike serving its opposition papers on counsel for Nielsen and SMRTV.

counsel refuses to serve Blue Spike's sealed documents on Nielsen or SMRTV, prejudicing Nielsen's and SMRTV's ability to litigate their license defenses.

Dated: September 18, 2014

FENWICK & WEST LLP

By: /s/ David M. Lacy Kusters

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Attorneys for Defendants
The Nielsen Company (US) LLC and
SMRTV, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 18, 2014.

/s/ David Lacy Kusters
David Lacy Kusters